



Expungement of an Adult Record

A GUIDE TO EXPUNGEMENT OF ADULT RECORDS IN THE FAMILY COURT

<http://courts.state.de.us/family>

FAMILY COURT OF THE STATE OF DELAWARE

What is an Expungement?

Expungement is the way in which an adult's criminal record and all records of arrest related to that crime, including fingerprints and photographs, are destroyed or shielded from general view.

In Delaware, Section 1025 and Section 1026 of Title 10 of the Delaware Code governs the process of petitioning for expungement of an adult record.

I have been charged with a crime. Can I have my charge expunged?

Mandatory Expungement

If you were charged with the commission of a crime that is designated as a misdemeanor or violation of titles 4, 7, 11, 16 or 23 of the Delaware Code and the case was terminated in your favor and you have not previously been convicted of another criminal offense, you may contact the State Bureau of Identification to request that your record be expunged. If you meet the requirements described above, it is mandatory that your expungement be granted.

-Mandatory Expungement is not applicable to the records of a case in which the defendant was charged with any of the following:

- 1) any misdemeanor designated as a sex offense pursuant to 11 Del.C. 761
- 2) any misdemeanor set forth in subpart A or subchapter II of Chapter 5 of the Delaware Code
- 3) Trespassing with Intent to Peer or Peep, pursuant to 11 Del.C. 820
- 4) Endangering the welfare of a child, pursuant to 11 Del.C. 1102
- 5) Endangering the welfare of an incompetent person, pursuant to 11 Del.C. 1105
- 6) any misdemeanor set forth in subparts A,B,C or F of subchapter IV of Chapter 5 of 11 Del.C.
- 7) any misdemeanor or violation set forth in Chapter 85 of 11 Del.C.
- 8) Patient Abuse, pursuant to 16 Del.C. 1136
- 9) Operation of a Vessel or Boat While Under the Influence, pursuant to 23 Del.C. 2302

Discretionary Expungement

If your charge does not fall into one of the categories for mandatory expungement as described above, you may file a Petition for Expungement of Adult Record asking the Family Court to expunge your record if:

You were charged as an adult under the jurisdiction of the Family Court;

AND

You were acquitted, the charge was dismissed or a nolle prosequi (the Attorney General decided not to pursue the charge) was taken;

AND

The Court finds that the continued giving out of the record of arrest causes you a manifest injustice.

I have previously been convicted of a criminal offense. Will this affect my Petition for Expungement?

If you have previously been convicted of a criminal offense (different from the offense that you are seeking to have expunged), that shall be considered by the Court as prima facie evidence that the continued giving out of your record *does not* cause you a manifest injustice. This means that the Court will deny your Petition for Expungement unless you can show significant evidence why it should be granted.

Will the Court hold a hearing regarding my Petition for Expungement?

Only if the Court believes it is necessary to hold a hearing. If the Court finds that the continued giving out of the record of arrest causes you a manifest injustice, it will enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it will deny the Petition. This is *usually* done without a hearing.

If I file a Petition for Expungement of an Adult Record, will the Court expunge my charges automatically?

Not necessarily. The attorney general's office may oppose your request and/or the Court may find that there are other reasons to not grant the expungement. It is in the Court's discretion to grant an expungement.

What will happen if my charge(s) is expunged?

If the Court enters an Order granting your Petition for Expungement of an Adult Record and orders various agencies to comply with its Expungement Order, then all evidence of your charge(s) and arrest record relating to that charge(s), including fingerprints and photographs, will be destroyed or shielded from view. This will occur within 60 days of the Court's order.

When a potential employer does a criminal background check, there will be no evidence on record with the Court or other State agencies relating to the expunged adjudication.

Where can I get a Petition for Expungement?

A Petition for Expungement of an Adult Record is available at Family Court or on the Family Court website <http://courts.delaware.gov/Courts/Family>.